IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

Crl.MC.No. 3871 of 2006()

OP.179/2005 & M.C.226/2005 of FAMILY COURT, KASARAGOD

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PETITIONER: ACCUSED

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1. NIYAS AHAMMED, AGED 34,
   S/O. ABOOBEKAR SHIHABUDHEEN, AMEEN MANZIL,
   BANDIYODE, MANGALAPADY, KASARAGOD.

2. HASSANBI, AGED 56, W/O. ABOOBEKAR
   SHIHABUDHEEN, -DO- -DO-

3. RIYAS, AGED 21,
   S/O. ABOOBEKAR SHIHABUDHEEN, -DO- -DO-

BY ADV. SMT.R.PADMAKUMARI

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. SAHIRA BANU, AGED 24, D/O. ABDUL HAMEED,
   HAMMED MANZIL, KUTHUKOTTY, NAYA BAZAR,
   P.O.MANGALAPADY, KASARAGOD.

BY ADV. SMT.VEENA KRISHNAN
PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3871 of 2006

Dated this the 23rd day of November 2006

O R D E R

The petitioners are accused persons facing a prosecution under Sections 406 and 498A I.P.C. They are the husband and his relatives. The prosecution has been launched at the instance of the second respondent, the wife of the first petitioner. Cognizance has been taken on the basis of the final report submitted by the police, after due investigation.

2. This petition is filed by the petitioners to quash the criminal prosecution pending against them. The reason urged is that the second respondent/complainant/wife of the first petitioner has settled her disputes and differences with petitioners 1 to 3. She has compounded the offences allegedly committed by the petitioners. All the disputes between them have been settled. A claim for maintenance under Section 125 Cr.P.C, and under the civil law for past maintenance, have all been settled and such settlements reported to the family court under Annexures A3 and A4. It is in these circumstances prayed that the proceedings against the petitioners may be quashed.

3. The second respondent has entered appearance through her counsel. The second respondent also submits that all the disputes

have been settled and the offences compounded and the spouses have now resumed co-habitation. The prosecution initiated under Section 498A may not be permitted to continue as an irritant to the harmony, which is already achieved by settlement of disputes.

4. Offences alleged are not compoundable. But in view of the dictum in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386], the counsel prays and I am satisfied that in the interests of matrimonial harmony, proceedings can be quashed by invocation of the powers under Section 482 Cr.P.C. It has clearly been held in B.S.Joshi vs. State of Haryana [AIR 2003 SC 1386] that the interests of justice do sometimes transcend the interests of mere law and the powers under Section 482 Cr.P.C can be invoked in aid to the interests of justice, even when offences alleged are not compoundable as per the stipulations of Section 320 Cr.P.C. In the facts and circumstances of the instant case, where the spouses have admittedly resumed co-habitation, burying all their past disputes, I am satisfied that prosecution does not deserve to be continued.

5. In the result:

a) This Crl.M.C is allowed.

b) Proceedings in C.C.No.379/2006 before the the Chief Judicial Magistrate, Kasaragod is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006